

PROFESSIONAL SERVICES AGREEMENT

DATE: February 11, 2011

PARTIES: "CLIENT"

THE CITY OF BURBANK, a municipal corporation

Designated Official: Name: Greg Herrmann
Title: Assistant Executive Director
Telephone: 818.238.5176

Mailing Address: 275 E. Olive Avenue
P. O. Box 6459
Burbank, CA 91510

THE "CONSULTANT"

Vision Internet Providers, Inc.

Representative: Name: Steven Chapin
Title: President
Telephone: 310-656-3100

Mailing Address: 2530 Wilshire Blvd. 2nd Flr.
Santa Monica, CA 90403

TERM: Commencement date: March 14, 2011
Completion date: March 14, 2012

COST OF SERVICE: \$4,960

THIS AGREEMENT MUST BE FIRST EXECUTED BY THE CONSULTANT OR ITS REPRESENTATIVE AND APPROVED AS TO FORM BY THE CITY ATTORNEY BEFORE THE AGREEMENT MAY BE EXECUTED ON BEHALF OF THE CITY OF BURBANK.

REQUESTS FOR A WAIVER OF TERMS MUST BE IN WRITING AND PRESENTED TO THE CITY ATTORNEY'S OFFICE AT THE TIME THIS AGREEMENT IS DELIVERED TO THE CITY ATTORNEY'S OFFICE FOR REVIEW AND APPROVAL AS TO FORM.

1.0 Services. Consultant, as an independent contractor, agrees to perform during the term of this Agreement, each and every service set forth on the "Scope of Services" attached to this Agreement as Exhibit "A." The initiation of service by the Consultant will commence upon receipt of a written notice from the Designated Official authorizing Consultant to proceed, and only to the extent of such authorization. The services of the Consultant shall include the making of all investigations, studies, and analysis required by the conditions involved in each request of the Designated Official.

2.0 Compensation. The Client shall pay for the services of Consultant either on a time-and-material basis or on a fixed-price basis, depending upon the agreed cost of the applicable service as indicated on the "Schedule of Compensation" which is set forth in Exhibit "B." No payment for expenses or labor shall be paid by Client unless it is related to a service, which is referred to in the Scope of Services. The cost of service designated on the first page of this Agreement may be increased by 10% of the original Cost of Services or \$10,000, whichever is less with the prior written approval of the Designated Official. Any additional increase in the cost of service designated on the first page of this Agreement must have the prior written approval and authorization of the City Manager.

3.0 Payment. If the service specified in the Scope of Services is to be paid for on a fixed-price basis, then Client shall pay for services of Consultant the total fixed price according to the progress payment schedule established in the Schedule of Compensation. If, however, payment is to be made on a time-and-material basis, then Consultant shall, at the end of each calendar month in which services are performed or expenses are incurred under this Agreement, and prior to the tenth day of the following month, submit to the Client a verified invoice prepared in the manner prescribed by the Client and the Designated Official. Client's payment to Consultant shall be made within thirty (30) days of either the date of completion of each phase as set forth in the progress schedule if Consultant's Compensation is a fixed price, or the date of Consultant's invoice if compensation is calculated on a time-and-material basis, whichever is applicable.

4.0 Standard of Skill. Consultant, and Consultant's staff, if any, is skilled in the professional calling necessary to perform the work agreed to be done pursuant to this Agreement. Client relies upon the skill of the Consultant, and Consultant's staff, if any, to do and perform such work in a skillful manner, and Consultant agrees to thus perform Consultant's work. The acceptance of Consultant's work by the Client shall not operate as a release of the Consultant from such standard of care and workmanship.

5.0 Independent Contractor. Consultant is retained and employed by Client only to the extent set forth in this Agreement, and the Consultant's relationship to the Client is that of an independent contractor. Consultant shall be free to dispose of all portions of Consultant's time and activities which Consultant is not obligated to devote to the Client in such a manner and to such persons, firms, or corporations as the Consultant sees fit except as expressly provided in this Agreement. Consultant shall not be considered to have the status of an employee under this Agreement or be entitled to participate in any insurance, medical care, vacation, sick leave, or other benefits provided for Client's officers or employees.

6.0 Indemnification. Consultant shall take all reasonable precautions to prevent the occurrence of any injury, including death, to any person or any damage to any property arising out of the acts or omissions of the Consultant, its agents, employees, or subcontractors.

Consultant shall defend, indemnify and hold harmless the Client and its officers, agents, and employees, against any claim for personal injury, property damage, or wrongful death arising out of or as the result of any work by Consultant or the employees, agents, or subcontractors of the Consultant, in the performance of this Agreement.

Client will defend, hold harmless, and indemnify Consultant, its officers, directors, shareholders, employees, and agents from and against all liability, loss, cost, expense, including reasonable attorney's fees, resulting from any claim of injury to person, damages to property, or monetary damages arising out of Client's intentional misconduct or failure to perform obligations under this Agreement.

7.0 Termination of Agreement. Either party may terminate this Agreement at any time during the term of the Agreement by giving the other party thirty (30) days notice in writing. This Agreement may be extended beyond the term only by the written agreement of both parties prior to the expiration of the term of the Agreement.

In the event this Agreement is terminated without cause, the Client shall pay Consultant for all services performed to the date of termination, including, but not limited to, all time and materials expended since the prior progress payment. Upon termination of the Agreement pursuant to this Section, the Consultant will submit an invoice to the Client pursuant to Exhibit "B".

8.0 Safety Requirement. All work performed under this Agreement shall be performed in such a manner as to provide safety to the public and to meet or exceed the safety standards outlined by CAL-OSHA. The Client reserves the right to issue restraint or cease and desist orders to the Consultant when unsafe or harmful acts are observed or reported relative to the performance of the work under this Agreement. The Consultant shall maintain the work sites free of hazards to persons and property resulting from its operations. Any hazardous condition noted by the Consultant, which is not the result of his operations, shall immediately be reported to the Client.

9.0 Insurance. Consultant shall maintain the following insurance coverage throughout the term of this Agreement, and upon request Consultant shall show Client evidence of such coverage:

9.1 Automobile Insurance. If Consultant uses, or intends to use, a personal automobile in the performance of this Agreement, automobile liability insurance with limits of not less than \$100,000.00 per person and \$300,000.00 per accident for bodily injury and not less than \$25,000.00 per accident for property damage.

Waiver Approved:

City Attorney or designee

Management Services Director or designee

9.2 Workers' Compensation Insurance. Workers' Compensation Insurance and Employer's Liability Insurance on any employees of Consultant performing services under this Agreement. **This insurance cannot be waived, but does not apply if Consultant is a sole proprietor and provides a written statement to that effect.**

9.3 General Liability and Property Damage Insurance. Unless expressly waived and such waiver is evidenced by the signature of the requisite officers of the client designated in this paragraph, Consultant shall maintain general liability insurance and property damage insurance in the amount of \$1,000,000.00 combined single limit. When this coverage is required, the Client shall be named as an additional insured on a separate endorsement to the insurance policy. The endorsement shall require the insurance company to provide Client a minimum of ten (10) days notice of the cancellation of the policy.

Waiver Approved: _____

City Attorney or designee

Management Services Director or designee

9.4 Errors and Omissions Insurance. Errors and Omissions Insurance which includes coverage for professional malpractice, in the amount of \$1,000,000.00. The policy shall provide for coverage of all claims occurring during the term of the policy notwithstanding the fact that the claim may be asserted subsequent to the expiration of the policy for a minimum period of three (3) years.

Waiver Approved: _____

City Attorney or designee

Management Services Director or designee

10.0 Miscellaneous Insurance Requirements.

10.1 Recovery from Consultant's Insurance. Consultant agrees that in the event of loss due to any of the perils for which it has agreed to provide insurance, the Consultant shall look solely to its insurance for recovery.

10.2 Failure to Secure. If Consultant at any time during the term of this Agreement, should fail to secure or maintain any insurance required under this Agreement, the Client shall be permitted to obtain such insurance in the Consultant's name or as an agent of the Consultant and shall be compensated by the Consultant for the cost of the insurance premiums at

the maximum rate permitted by law computed from the date written notice is received that the premiums have been paid. Such costs can be assessed by deducting such costs from any amounts due and payable to the Consultant as compensation under the terms of this Agreement.

10.3 Additional Insured. The naming of an additional insured shall not affect any recovery to which such additional insured would be entitled under this policy if not named as an additional insured and an additional insured named under this Agreement shall not be held liable for any premium or expense of any nature on this policy or any extension thereof. Any other insurance held by an additional insured shall not be required to contribute toward any loss or expense covered by the insurance provided by this policy. Proceeds from any policy or policies shall be payable to the Client primarily, and to the Consultant secondarily, if necessary.

10.4 Evidence of Insurance. If requested by Client, Consultant shall furnish Certificates of Insurance evidencing the required coverages or the original of the insurance policies for review by the Client or the Designated Official.

11.0 Work Product.

11.1 Deliverables. Consultant shall deliver to the Client the studies, plans, specifications, or other documents as are identified in the Scope of Services; and Consultant shall, upon completion of all work, submit to the Client all information developed in the course of the Consultant's services. Consultant shall, in such time and in such form as the Client may require, furnish reports concerning the status of services required under this Agreement. Consultant shall, upon request by Client and upon completion or termination of this Agreement, deliver to the Client all material furnished to Consultant by the Client.

11.2 Ownership. Each and every report, draft, work product, map, record, and other document reproduced, prepared, or caused to be prepared by the Consultant pursuant to or in connection with this Agreement shall be the exclusive property of the Client.

Consultant conveys to Client, and acknowledges same, that Client shall own all right, title, and interest in and to all work product created by Consultant as required by this Agreement, including but not limited to, the "look and feel" of the website developed, all layered Photoshop and Flash files, the worldwide trademarks, service marks, and copyrights in the work product, including but not limited to any designs, Meta Tags, text, photographs whether edited or not, and other graphic images, appearing on the web sites or other applicable medium. Consultant agrees to execute any documentation required by Client if copyright registration of a work is desired by Client. Consultant further conveys to Client all derivative uses of the work product.

The intellectual property developed and work product shall be owned at all times by Client. Consultant further acknowledges that Client has the right to use the work product, and any portion thereof, for any and all purposes throughout the world, and that no further permission or money shall be payable to Consultant in connection with any such use. In the event this Agreement is ever terminated, the work product shall be owned by Client.

Notwithstanding anything to the contrary herein, work product shall not include the Vision

Internet Content Management Tool (also known as the Vision Content Management Tool, VCMT, VCMS and the Vision Content Management System), dynamic components, interactive components (collectively, the "Consultant's Proprietary Tools"), and other materials or components reasonably designated by Consultant, or any portion thereof, which: (a) have been previously made available to the public or which is made available to third parties by Client hereafter (except through ordinary interface with or use of Client's Website by members of the public), and/or (b) which was already in Consultant's possession prior to services performed under this Agreement ("Consultant's Proprietary Information"). Consultant shall retain all right, title, and interest in all of Consultant's Proprietary Tools and Consultant's Proprietary Information; however, upon payment in full, Consultant hereby grants to Client a perpetual, non-exclusive, royalty free license to use for its own use any of Consultant's Proprietary Tools and Consultant's Proprietary Information that is embedded in the work product.

Consultant represents and warrants that all work product shall be original and not subject to any other ownership claims by third parties. Consultant shall not infringe or violate the copyright and other intellectual property rights of third parties. Each Party warrants that it holds all rights necessary to display all the images, data, information or other items being displayed at the Client's web pages during the effective period of this Agreement. Client expressly authorizes Consultant to display and/or modify any Client supplied images, data, information and other items in connection with the services provided herein, provided Consultant receives Client's expressed consent prior to displaying any modified images, graphics, or other data and information.

11.3 Confidentiality.. Consultant may be granted access to information that is exempt from disclosure to the public (Government Code Section 6254 and 6254.16) and may contain "trade secrets" (see Government Code Section 6254.7) when it is necessary for Consultant to perform its obligations pursuant to this Agreement. If Consultant is granted such access to confidential information, Consultant shall not be considered to be a member of the public as that term is used in Government Code Section 6254.5.

Consultant shall not disclose, publish, or authorize others to disclose or publish, design data, drawings, specifications, reports, or other information pertaining to the projects assigned to Consultant by the Client or other information to which the Consultant has had access during the term of this Agreement without the prior written approval of the Designated Official during the term of this Agreement and for a period of two (2) years after the termination of this Agreement.

Client shall not disclose to any other entity or person any of Consultant's Proprietary Tools or Consultant's Proprietary Information regarding the activities of the Consultant, except as required by law, Freedom of Information Act, California Public Records Act, Order of a Court with competent jurisdiction, or as authorized by the Consultant. Client will notify Consultant in writing of any such requests.

11.4 Records. Consultant shall maintain complete and accurate records with respect to sales, costs, expenses, receipts, and other such information required by the Client or the Designated Official. The Consultant shall maintain adequate records on services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily

accessible. Consultant shall provide access to the Designated Official or his designees at all proper times to such books and records, and gives the Designated Official or his designees the right to examine and audit such books and records and to make transcripts as necessary, and to allow inspection of all work, data, documents, proceedings, and activities related to this Agreement.

12.0 Assignment. This Agreement is personal to the Consultant. Any attempt at assignment by the Consultant shall be void unless approved in writing by the Designated Official. Consultant's services pursuant to this Agreement shall be provided by the Representative or directly under the supervision of the Representative and Consultant shall not assign another to supervise the Consultant's performance of this Agreement without the prior written approval of the Client, by and through the Designated Official.

13.0 Miscellaneous Terms.

13.1 Nuisance. Consultant shall not maintain, commit, or permit the maintenance or commission of any nuisance in connection with the performance of services under this Agreement.

13.2 Permits and Licenses. Consultant, at its sole expense, shall obtain and maintain during the term of this Agreement, all appropriate permits, licenses, and certificates that may be required in connection with the performance of services under this Agreement.

13.3 Conflict of Interest. Consultant agrees to be familiar with and comply with all applicable federal, state, and local conflict of interest laws.

13.4 Waiver. A waiver by the Client of any breach of any term, covenant, or condition contained in this Agreement shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained in this Agreement whether of the same or different character.

13.5 Notices. Any notice required by this Agreement to be given in writing to the persons, at the addresses specified on the first page of this Agreement. Either party may change the specified person or address at which it is to receive notices by so advising the other party in writing.

13.6 Mediation. The parties agree to submit all claims, disputes or other matters in question between the parties arising out of or relating to this Agreement or breach thereof to mediation prior to the institution of any litigation.

13.7 Cost of Litigation. If any legal action is necessary to enforce any provision of this Agreement or for damages by reason of an alleged breach of any provisions of this Agreement, the prevailing party shall be entitled to receive from the losing party all costs and expenses in such amount as the court may determine to be reasonable. In awarding the cost of litigation, the court shall not be bound by any court fee schedule, but shall, if it is in the interest of justice to do so, award the full amount of costs, expenses, and attorneys' fees paid or incurred in good faith.

13.8 Severability. If any part, term, or provision of this Agreement shall be held illegal, unenforceable, or in conflict with any law of a federal, state, or local governmental having jurisdiction over this Agreement, the validity of the remaining portions or provisions shall not be affected by such holding.

13.9 Governing Law. The terms of this Agreement shall be interpreted according to the laws of the State of California. Should litigation occur, venue shall be in the Superior Court of Los Angeles County.

13.10 Integrated Contract. This Agreement represents the entire Agreement between the Client and the Consultant. No verbal agreement or implied covenant shall be held to vary the provisions of this Agreement. In the event an inconsistency arises between any exhibit and any term of this Agreement, the terms of this Agreement shall prevail. This Agreement shall bind and inure to the benefit of the parties to this Agreement and any subsequent successors and assigns.

13.11 Client shall supply all information to Consultant in digital format including without limitation copy, text, audio files, video files, pdf files, photographs, artwork, and preexisting graphics.

13.12 Client understands and agrees that Consultant will develop website frontend to be compatible with Internet Explorer 7.0 and 8.0 and Firefox 3.6. Website backend will be compatible with Internet Explorer 7.0 and 8.0. Website may not be compatible with previous or future versions. Website will be optimized for 1024 x 768 pixels resolution or above. Client understands and agrees that the website will be developed with Hypertext Markup Language ("HTML"), JavaScript, and Microsoft ASP.NET ("MS-ASP") interfaced with a database created in Microsoft SQL Server 2005 ("MS-SQL"). Client understands and agrees that the website is developed to run on a Microsoft Windows 2008 Server ("MS-Server"). visionMobile™, if provided under this Agreement, will be compatible with iPhone OS Safari 4, Android Chrome 4, Windows Mobile OS IE 6, BlackBerry Browser 4.5 and 5.0, Opera Mini 4 and 5, and Palm webOS. visionMobile™ may not be compatible with previous or future versions. visionMobile™, if provided under this Agreement, shall include "Powered by Vision Internet" in the footer and always be linked to a Consultant web page. Client is responsible for the costs of all software licensing.

Client understands and agrees that the website frontend will be designed to be compliant with Section 508 guidelines on accessibility. Content migrated into the website by Consultant will also be compliant. Compliance standards will be verified via Watchfire's Bobby™ software prior to Completion. Client understands and agrees that website backend and third party tools may not be Section 508 compliant.

13.13 Limited Warranty. Consultant hereby warrants that all of the deliverables included in this Agreement will be delivered to Client at Client's place of business. All programming code developed by Consultant within the project is warranted to be fit for Client's purpose for a period of twelve (12) months from the date the website is accepted by the Client in writing as fully operational ("Completion"). Consultant will create a back up of the website on the date of Completion. If problems covered by this warranty of fitness for particular purpose arise

while Client or its designee is maintaining the website, Consultant will restore the website back to its condition as it existed at Completion. If Consultant is maintaining and hosting the website, Consultant shall restore the website back to its condition as it existed on the day of the most recent backup. Consultant shall only be responsible for any costs associated with correcting any unmodified programming code during this twelve (12) month period following the Completion.

Except as expressly set forth in the immediately preceding paragraph, CONSULTANT MAKES NO WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, OF MERCHANTABILITY. In no event, at any time, shall the aggregate liability of Consultant exceed the amount of fees paid by Client to Consultant and Consultant shall not be responsible for any lost profits or other damages, including direct, indirect, incidental, special, consequential or any other damages, however caused.

13.14 Client acknowledges and understands that the number of page or site visitations, download speed, database performance, and the number of hits or impressions is outside Consultant's control and not warranted under this agreement.

13.15 Consultant may use selected web pages developed for the Client in its own promotional materials as examples of its work. Client agrees that Consultant may place in the website footer an unobtrusive text link reading "Developed by Vision Internet" or the equivalent.

13.16 Client agrees to use the website in strict accordance with, but not limited to, all local, state, and federal laws. Client hereby represents that any text, data, graphics, or any other material published by Client on its website is free from violation of or infringement upon copyright, trademark, service mark, patent, trade secret, statutory, common law or proprietary or intellectual property rights of others, and is free from obscenity or libel.


13.17 Neither the course of conduct between the Parties nor any trade practice shall act to modify the provisions of this Agreement except as expressly stated herein.

13.18 Any delay in the performance by either Party hereto of its obligations hereunder shall be excused when such delay in performance is due to any cause or event of any nature whatsoever beyond the reasonable control of such Party, including, without limitation, any act of God; any fire, flood, or other natural disaster; any computer virus, worm, denial of service attack; significant earthquake; any act of a public enemy, war, insurrection, riot, explosion or strike; provided, that written notice thereof must be given by such Party to the other Party within ten (10) days after occurrence of such cause or event.

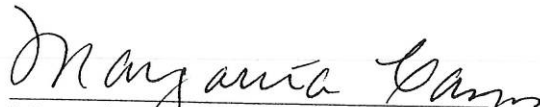
13.19 The titles and headings of the paragraphs of this Agreement have been inserted for convenience of reference only and are not intended to summarize or otherwise describe the subject matter of such paragraphs and shall not be given any consideration in the construction of this Agreement.

In recognition of the obligations stated in this Agreement, the parties have executed this Agreement on the date indicated above.


"CONSULTANT"

Signature 
Name (please print) Steven Chapin
Title President

ATTEST:
Office of the City Clerk


Margarita Campos, CMC, City Clerk

"CLIENT"

Signature 
Name (please print) GREG HERRMANN
Title Assistant Executive Director

Approved as to Form and Legal Content:
Dennis A. Barlow, City Attorney


By. 
Signature
Name (please print) JOSEPH H. MCDUGALL
Title Sr. Asst. City Atty.

EXHIBIT A

SCOPE OF SERVICES

Website Development

Contractor will perform the following:

- **Design Theme:** Contractor will implement a design theme into the City of Burbank's website CMS to allow the Economic Development Department's pages to have their own look and feel. For your theme, we will hide the main City website's top navigation bar so that you will only have navigation on the left. (NOTE: Graphic design work will be done separately by a third party designer, arranged and overseen by the Client, and Contractor will need to be allowed to provide input to make sure the design fits with the Vision CMS. Final designs will need to be delivered to Contractor in .psd files.)
- **Additional Consulting:** Contractor will provide one day of consulting on the sitemap and navigation, helping to re-organize your pages, and brainstorming ideas for new pages. Consultation will be conducted onsite at the Client's office.
- **Google Map:** Contractor will create a dynamic Google map with outlines showing your different areas and districts. Note: Contractor will create one (1) Google map, and Client will need to provide all the geographical coordinates of the outlines to be displayed on the map.
- **Rotating Homepage Image:** Contractor will add a rotating image feature to your homepage, similar in style to the rotating image on the homepage at www.weho.org.

EXHIBIT B

SCHEDULE OF COMPENSATION

Website Development:

Consultant agrees to perform Website Development as described in "Exhibit A" at a price of \$4,960.

Client agrees to pay Consultant as follows:

- (i) An initial payment equal to 50% of the total cost;
- (ii) A payment equal to 50% of the total cost upon completion of the work.

Additional Services:

Additional services not covered in this Agreement and extra hours will be presented to City for approval prior to commencement of work ("Extra Work"). Extra Work will be billed at Contractor's prevailing hourly rates, which are currently as follows: Content Migration, \$85/hr; Graphic Production, \$95/hr; Quality Assurance, Testing, Debugging, Technical Support, Webmaster Services, HTML Programming, \$105/hr; Consulting, Project Management, Database Design, Dynamic Programming, \$135/hr; Graphic Design, Training, \$125/hr; Straight flatbed scanning will be billed at \$10 per scan. Touch up work to images will be billed at the Graphic Design hourly rate. City shall be responsible for any or all additional fees including, without limitation: photography, stock images, illustration, fonts, scanning, software, applications, online promotion, marketing, copy writing, redesign, change orders, mailings, and fees to any third party vendors if applicable.